IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

Crl.MC.No. 137 of 2007()

CMP.711/2006 of JUDL.MAGISTRATE OF FIRST CLASS, SASTHAMCOTTA

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PETITIONER:

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1. VASU, S/O. NANU,
   AGED 66 YEARS, LAKSHMI SREEYIL, EDAKKAD,
   PORUVAZHY P.O., SASTHAMCOTTA, KOLLAM.

2. KAMALAKSHY, W/O. VASU,
   AGED 62 YEARS, LAKSHMI SREEYIL, EDAKKAD,
   PORUVAZHY P.O., SASTHAMCOTTA, KOLLAM.

3. SURENDRAN, S/O. PAPPU,
   AGED 50 YEARS, NADUVILAKATHU HOUSE,
   PUTHANAMBALAM P.O., KOLLAM.

BY ADV. SRI.K.BABU THOMAS

RESPONDENTS:

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1. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. SYAMALA KUMARI, W/O. SUGATHAN V.,
   AGED 38 YEARS, LAKSHMI SREEYIL, EDAKKAD,
   PORUVAZHY P.O., SASTHAMCOTTA, KOLLAM NOW
   RESIDING AT KALLUMPURATHU HOUSE, ERATHU VILLAGE,
   THUVAYOOR NORTH MURI, KADAMBANAD, KOLLAM.

3. SUGATHAN V., S/O. VASU,
   AGED 40 YEARS, LAKSHMI SREEYIL, EDAKKAD,
   PORUVAZHY P.O., SASTHAMCOTTA, KOLLAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.CNo.137 of 2007

Dated this the 16th day of January, 2007

ORDER

Petitioners are accused 2 to 4 in a private complaint filed by the 2nd respondent herein. The 3rd respondent is the 1st accused. The 2nd respondent herein is the wife of the 3rd respondent. Petitioners are parentS and uncle of the 3rd respondent. The offences alleged are the ones punishable under Section 498 A, 323 and 506 read with Section 34 I.P.C.

2. The private complaint filed by the 2nd respondent before the learned Magistrate was forwarded by the learned Magistrate to the police under Section 156(3) Cr.P.C. A copy of the private complaint is produced as Annexure-A1. On the basis of Annexure-A1 complaint referred to the police under Section 156(3) Cr.P.C, Shooranad Police has registered Crime No.238 of 2004. A copy of the F.I.R is produced as Annexure-A2.

3. The petitioners have come to this Court with the prayer that powers under Section 482 Cr.P.C may be invoked to quash Annexure-A2 F.I.R in so far as it relates to the petitioners/accused 2 to 4.

4. What are the reasons ? The learned counsel for the petitioners contends that the allegations are inherently improbable

and cannot be accepted. It is extremely improbable that the petitioners who do not reside along with respondents 2 and 3 would have gone to the place of residence of respondents 2 and 3 and encouraged the 3rd respondent to assault and commit the offences against the 2nd respondent. From 1995 to 2006, accused 2 and 3 were employed in the Army and they had returned to the native place only after their retirement on 04.01.2006. The allegations are raised by the 2nd respondent against the petitioners with fraudulent and vexatious intent. No medical certificate whatsoever is produced. No local witnesses who could have witnessed the incident have been cited also. In these circumstances, the counsel submits that continuation of the investigation on the basis of Annexure-A2 F.I.R would be a traversity of justice and in these circumstances prays that the powers under Section 482 Cr.P.C may be invoked.

5. I have anxiously considered the submissions made at the Bar by the learned counsel for the petitioners. I have perused the petition filed and also the annexures. I shall scrupulously avoid any detailed discussion on the acceptability of the allegations raised by the 2nd respondent against the petitioners in Annexure-A1. Suffice it to say that at this stage and with the available inputs and conscious of the nature and quality of the jurisdiction of this Court under Section 482 Cr.P.C, it would be presumptuous on the part of this Court to

jump to the conclusion that the allegations are totally false and therefore no investigation need be conducted into the allegations raised. I have no reason to assume that the Investigating Officer shall not conduct a proper investigation in accordance with law and ascertain truth/falsity of the allegations raised. I am, in these circumstances, not satisfied that the powers under Section 482 Cr.P.C can or ought to be invoked to prematurely terminate the investigation which has already commenced against the petitioners.

6. This Crl.M.C is, in these circumstances, dismissed. But I may hasten to observe that the dismissal of this Crl.M.C shall not in any way fetter the rights of the petitioners to seek anticipatory bail from the court concerned or to raise all appropriate and relevant contentions in case final report is filed against them.

(R.BASANT, JUDGE)

rtr/-